

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MARIA EMMA PEREZ,

§

Plaintiff,

§

v.

Civil Action No.: 3:19-CV-00311

WALMART INC.,

§

Defendant.

§

WALMART INC.'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WALMART INC. (“Walmart”) and files it’s Notice of Removal pursuant to 28 U.S.C. § 1441 based on diversity of citizenship jurisdiction, and in support of the same, would respectfully show the Court as follows:

**I.
BACKGROUND**

1. Plaintiff’s Original Petition was filed in state court and assigned to the 384th Judicial District Court, El Paso County, under Cause No. 2019DCV3343.¹

2. Plaintiff asserts a state law claim for premises liability, alleging that “while upon Defendant’s premises, Plaintiff suffered bodily injuries as a direct result of the fall proximately caused by a dangerous condition, which Defendant created, knew, or in the exercise of ordinary care, should have known existed.”²

3. Furthermore, Plaintiff asserts a claim for negligence, alleging that “Defendant owed

¹ See Ex. A, Plaintiff’s Original Petition.

² *Id.* at Section V.

a reasonable degree of care to Plaintiff" and that "Plaintiff's injuries and damages were proximately caused by the negligence of Defendant." Plaintiff goes on to allege ten ways in which she contends that Walmart was negligent.³

4. Written notice of removal has been given to Plaintiff and the state court clerk.
5. Plaintiff seeks over \$75,000.⁴
6. Service occurred less than thirty days ago.⁵ Accordingly, removal is timely under 28 U.S.C. § 1446.

7. The El Paso Division of the Western District of Texas embraces the place where the state case was pending; thus, venue is proper under 28 U.S.C. §§ 1441(a) and 124(d)(3).

8. Walmart answered in state court⁶ and reserves the right to plead further as permitted.

9. All documents filed in state court are attached as Exhibit A.

II. **BASIS FOR REMOVAL**

10. This case is being removed based on diversity of citizenship jurisdiction under 28 U.S.C. § 1441(b).

A. Plaintiff and Defendant Walmart Stores Texas, LLC are completely diverse parties

11. Plaintiff is a Texas citizen.⁷

³ *Id.* Ex. A., Plaintiff's Original Petition at Section VI.

⁴ *Id.* Ex. A., Plaintiff's Original Petition at Section at Section II (Plaintiff seeks "over \$200,000.00").

⁵ See Ex. B, CT Corporation Service Document (service occurred on October 1, 2019).

⁶ See Ex. A, Walmart Inc.'s Answer.

⁷ Ex. A, Plaintiff's Original Petition Section III ("Plaintiff is a resident of El Paso County, Texas").

12. On the contrary, Defendant Walmart Inc. is not a Texas citizen. That is, Walmart Inc. is the new name of Wal-Mart Stores, Inc.,⁸ a corporation formed under the laws of the State of Delaware with its principal place of business in Arkansas.⁹

13. Thus, the parties are completely diverse.

B. The amount in controversy is satisfied, because Plaintiff seeks damages over \$75,000.00

14. For a diversity case to be removable, the amount in controversy must exceed \$75,000.¹⁰ Plaintiff seeks over \$200,000.00.¹¹ Accordingly, the amount in controversy requirement of 28 U.S.C. 1332(a) is satisfied.

**III.
JURY DEMAND**

15. Walmart asked for a state court jury trial and asks for a jury trial in this Court.

**IV.
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Walmart prays that this matter be placed on the Court's docket and for any other and further relief to which it may be justly entitled at law or in equity.

⁸ See Ex. C, Texas Secretary of State Form 406, filed on Dec. 15, 2017 (indicating that Walmart Inc. is Wal-Mart Stores, Inc.'s new name).

⁹ See Ex. D, Affidavit of Geoffrey W. Edwards, ¶ 3.

¹⁰ See 28 U.S.C. §§ 1441 and 1332(a).

¹¹ Ex. A, Plaintiff's Original Petition at Section II (Plaintiff seeks "over \$200,000.00").

Respectfully submitted,

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CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure, I certify that on the 28th day of October, 2019, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Alejandro Acosta, III
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/s/ *Laura Enriquez*
Laura Enriquez